

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/013736

International filing date (day/month/year)
03.12.2004

Priority date (day/month/year)
26.01.2004

International Patent Classification (IPC) or both national classification and IPC
C04B28/12

Applicant
CONSTRUCTION RESEARCH & TECHNOLOGY GMBH

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Gattinger, I

Telephone No. +49 89 2399-6097



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2006

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-7
Inventive step (IS)	Yes: Claims	
	No: Claims	1-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

PCT/EP2004/013736

Re Item V**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Reference is made to the following documents:

D1: EP-A-0 782 977 (W.R. GRACE & CO.-CONN) 9 July 1997

D2: DE 101 29 151 A1 (HENKEL KGAA) 21 February 2002

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1 to 7 is not novel in the sense of Article 33(2) PCT.

- 2.1. The document D1 discloses (the references in parentheses applying to this document):

A composition comprising an aqueous polymer latex (column 5; lines 13 to 29) and a component, which chemically binds water such as calcium oxide (column 6; lines 20 to 28), whereby exemplary amounts fall into the scope of independent claim 1, which is therefore not novel in light of D1. As D1 explicitly discloses the composition being applied as a waterproofing layer onto tunnel walls (column 3; line 56 to column 4; line 1) also claim 3 and 5 to 7 are not novel.

As within component B only the calcium oxide falls into the definition of a water-absorbing composition (see example 2) also claim 2 can not be considered to be novel.

- 2.2. The document D2 discloses (the references in parentheses applying to this document):

An adhesive composition comprising a polymer in form of an aqueous latex or a spray-dried powder (paragraph [0014]) and a water-absorbing composition such as lime (paragraph [0105], [0107]), whereby the ratios of polymer : water-absorbing component (paragraph [0109]) fall into the scope of claim 1, which is therefore also

not novel in view of D2.

As the composition may be used as a sealing coating (page 2; line 15), also claims 3 to 5 and 7 can not be considered to be novel.

As within component B only the calcium oxide falls into the definition of a water-absorbing composition (see examples) also claim 2 can not be considered to be novel.

Re Item VIII

Certain observations on the international application

The application does not meet the requirements of Article 6 PCT, because claims 1 to 7 are not clear.

- The statement concerning the source of the lime - being optionally also provided by Ordinary Portland cement (page 3; 3rd paragraph of the description) renders the present claims unclear, as said cement - usually containing 60 to 64 % calcium oxide - can not fulfil the requirements of a water absorbing composition containing at least 95 or approximately 100 % lime.
- The reference in the description on page 5 concerning a "cementitious composition" implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them.